

In the Matter of	)	
	)	
Broadcast Localism	)	MB Docket No. 04-233
	)	
	)	

{60010.DOC.3}

## ***Background***

Morgan Murphy has a distinguished track record of public service and outreach. The company is a leading broadcaster in small markets in Washington, Wisconsin, Idaho and Iowa and is highly regarded in these communities for their local service. Our industry faces well-publicized financial, technological and competitive challenges. Morgan Murphy, like other broadcasters in small markets, provides significant local broadcast service without the benefit of the advertising revenues available to larger-market broadcasters. The discrepancy is exacerbated by the extensive, well-documented costs of converting to digital broadcasting and the significant additional regulation associated with these efforts. Competition from cable, satellite and new media places growing pressure on scarce station resources. Morgan Murphy is no exception.

Meeting the challenge from new delivery systems and responding to the economic downturn imposes as much competitive and economic pressure on broadcasters as at any time since Morgan Murphy first started broadcasting nearly 70 years ago. For years, broadcasters have embraced local service as not just a licensee responsibility, but also as a unique public service that other providers of video and audio service cannot match. Yet, as the Commission has heard but failed to adequately acknowledge in the NPRM, broadcasters in smaller-and-medium-sized markets have often, as a result of financial hardship, been forced to curtail public-interest responsive programming such as news and public affairs.<sup>3</sup>

Despite these challenges, the Commission apparently intends to further constrain these scarce resources by adopting rules with dubious benefits that likely will result in unintended consequences. No matter how well-intentioned the Commission's efforts in this proceeding, certain of the proposals would impose disproportionate burdens on broadcasters in small-to-

---

<sup>3</sup> See, e.g., Comments of National Association of Broadcasters in Docket No. 04-233 at 32-34 (filed November 1, 2004).

medium-sized markets, with little record evidence of sufficient corresponding benefits. The Commission must give due consideration to the pre-existing marketplace and competitive incentives that broadcasters already have to maximize public service. The NPRM does not reflect such consideration. Moreover, the Commission has not found the requisite nexus between the purported harms it identifies and the rules it plans to adopt to address those harms. For these reasons, Morgan Murphy respectfully requests that the Commission refrain from adopting the proposals addressed below.

***New rules mandating permanent community advisory boards, if adopted at all, must be narrowly tailored.***

The NPRM proposes to require licensees to “convene a permanent advisory board made up of officials and other leaders from the service area of its broadcast station.”<sup>4</sup> The Commission’s stated goal is to help “ensure that licensees regularly gather information from community representatives to help inform the station’s programming decisions.” The Commission fails to adequately justify this proposal, and offers only a tenuous link between the proposal and the goal. Morgan Murphy urges the Commission to reject this proposal as unnecessary.

Over many years of broadcasting, Morgan Murphy has continually welcomed and solicited input from community leaders to help Morgan Murphy ensure that its broadcasts represent responsive programming. This is not merely a matter of civic responsibility – it is also a competitive advantage that Morgan Murphy and others hold over competing media services. Broadcasters embrace localism as more than a condition of their license, but also as a means to serve their community with programming tailored to local interests.

---

<sup>4</sup> NPRM at 14.

Some recent examples:

- Station KXLY-TV, Spokane, WA
  - Broadcasted a public service announcement and news stories regarding a campaign for a local food drive, including live broadcasts from collection locations during evening and morning newscasts.
  - Devoted a full week each month to helping families and community organizations by awarding nominated recipients with an “Extreme Team” project such as a home makeover or a new playground. The station conducted live remote broadcasts from the site and revealed the finished projects during news features.
  - Presented an annual workshop (“Meet the Media Day”) for nonprofit groups to help them learn how to build relationships with television and radio stations for coverage of community issues.
- Station KXLY-FM, Spokane, WA, conducted twice-yearly appeals to listeners for a litter-removal project along the Spokane River.
- Stations KAPP-TV, Yakima, WA and KVEW-TV, Kennewick, WA:
  - Hosted live segments of the Children’s Miracle Network telethon, providing four hours of live TV in both locations. The stations also sponsored the Children’s Hospital fundraising golf tournament, and provided free airtime and financial sponsorship.
  - Produced the local broadcast for the Muscular Dystrophy Telethon as well as providing news segments, public service announcements and fundraising activities.
- Station WKBT-TV, LaCrosse, WI:
  - Launched, at the suggestion of a local school teacher, a “Connect With Kids” website in April 2007 and co-hosted a training session for more than 125 teachers and community leaders on the subject of bullying. The initiative included training materials and other resources on the website, as well as broadcast news reports. WKBT-TV also aired news stories and a ½ hour program on underage drinking, featuring a nationally known expert’s presentation on the issue and discussion with high school students.
  - Extensively covered flooding problems in the viewing area in August 2007. WKBT-TV also was involved in fund-raising efforts that, community wide, raised \$395,000 in one day and \$500,000 total for the local Red Cross. The station also generated more than \$5,000 for donation to the Red Cross by selling copies of a WKBT-TV-produced one-hour special report on the flood story.
  - Was a major sponsor for the “Steppin’ Out in Pink” fundraiser for local breast cancer research in September 2007. Station anchors and reporters both emceed and worked at the event, which raised more than \$225,000 for the Norma J. Vinger Center for Breast Health at Gundersen Lutheran Hospital. WKBT-TV ran news stories and promotion spots, and the station continues to support this event throughout the year.

- Station WISC-TV, Madison, WI
  - Sponsored local middle- and high-school students in a business and education partnership lunch to provide instruction on business investing and networking.
  - Conducted the “Top Notch Teachers” program, where the station accepts nominations from parents and teachers and reports on monthly winners during news programs, on-site reports and 30-second spots about the winners. The station also conducts an annual banquet and awards ceremony.
  - Produced and aired weekly “For the Record” program with candidate interviews as well as aired regular news segments during the election season where a station political reporter critically examined political candidate or issue spots.

Morgan Murphy is proud of its stations’ efforts to learn about issues of importance to local communities. Nevertheless, Morgan Murphy opposes the Commission’s inflexible proposal to mandate permanent advisory boards. The Commission rightly rejected the ascertainment guidelines in 1981 and 1984, finding that market forces, the requirement to maintain issue-responsive programming and the petition-to-deny process, will ensure that broadcasters provide locally responsive programming. If anything, these reasons apply more strongly today than in the 1980s, particularly with respect to television broadcasting, due to the increased competition in the marketplace and the Commission’s efforts in the Enhanced Disclosure proceeding to facilitate broader public scrutiny of television broadcasters<sup>5</sup> and compliance with localism obligations. Morgan Murphy station leaders are also very active in the community and serve on local boards -- for example, principals at WISC-TV recently served on a board that raised funds for a performing arts center in Madison. The Commission should allow

---

<sup>5</sup> The Commission has enacted Enhanced Disclosure obligations for television licensees, including adoption of a standardized quarterly reporting form for broadcasters to indicate the community needs and issues, responsive programming, and the posting of that information on the Internet. *See Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, Report and Order (adopted Nov. 27, 2007). At present these new disclosure obligations apply only to television licensees, but the Commission has sought comment regarding whether radio licensees should also be subject to these requirements. *Digital Audio Broadcasting Systems and Their Impact on the Terrestrial Broadcast Service*, Second Report and Order, First Order on Reconsideration and Second Further Notice of Proposed Rulemaking, 22 FCC Rcd 10344 (2007).

the market to function rather than ratcheting up still more regulatory costs that disproportionately affect local broadcasters' ability to serve smaller markets.

The Commission's proposal for mandatory advisory boards is ill-advised for other reasons. First, it is arguable whether such boards are any more effective in addressing community concerns than other informal outreach methods, such as listener surveys, comment boxes, email campaigns, ad hoc efforts, website appeals and other methods. Broadcasters need the flexibility to tailor their approach to local circumstances, and the Commission should not impose a one-size-fits-all process to establishing the selection and composition of such boards. Such regulations would not reflect individualized circumstances in local markets and would intrude needlessly into broadcaster's wide ranging discretion in how it chooses to fulfill its public-interest obligations. Third, determinations of "representative cross-sections" are inherently subjective and ill-defined; Morgan Murphy doubts that the Commission can adopt a sustainable approach to board composition that is not needlessly over- or under-inclusive based on local circumstances. Finally, Morgan Murphy notes that other Commission proposals are already poised to promote additional community involvement, and the need to impose additional regulation here is minimal. In fact, broadcasters have myriad marketplace incentives to provide local service, and advisory boards will be established in local markets best suited to promote that goal. For example, station WISC-TV, in addition to its other outreach efforts, continues to use an informal ascertainment process to gather information about community issues. In this community, the station has deemed this informal process to be the means best tailored for meeting these objectives.

For these reasons, Morgan Murphy asks the Commission to continue to afford broadcasters the flexibility to gather information from community representatives via a variety of

means. The Commission should not mandate local advisory boards, but to the extent it does, the Commission should not set forth criteria for the composition of those boards.

***Reinstituting the “physical presence” rules would entail significant cost with little corresponding benefit.***

The NPRM states that the Commission is considering “requiring that licensees maintain a physical presence at each radio broadcasting facility during all hours of operation.”<sup>6</sup> This proposal is unnecessary. First, the proposal brings significant staffing costs for routine operations that could be consolidated and handled remotely. While the Commission apparently believes that “a requirement that all operations be attended may increase the likelihood that each broadcaster will be capable of relaying critical life-saving information to the public,”<sup>7</sup> this assertion is speculative and not reflective of operational realities. Any broadcaster with a proper remote operation system in place can inform the public in substantially the same manner as a staffed station, and the incremental benefit is minimal. By contrast, the staffing, electrical and other costs simply do not justify the expense in all but the most extreme circumstances. These additional costs mean that broadcasters will have to divert limited resources away from local service and programming to maintain a base level of technical staff beyond what the FCC already mandates. The record does not support such a policy, and Morgan Murphy urges the Commission to retain the existing rule.

***Resurrecting the restrictive pre-1987 main studio rule is unnecessary and unwise.***

The Commission has requested comment regarding whether “we should revert to our pre-1987 main studio rule in order to encourage broadcasters to produce locally originated programming.”<sup>8</sup> Morgan Murphy urges the Commission to retain its existing main studio rules.

---

<sup>6</sup> NPRM at 16.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 23.

In 1987 and 1998, the Commission reasonably and wisely adopted rules permitting broadcasters to locate their main studio at any location within the station's principal community contour or within 25 miles of the reference coordinates of the center of its community of license. At the time, the Commission recognized the wisdom of these provisions, noting that it would provide resource-constrained broadcasters with a means to recognize operational efficiencies in consolidating main-studio operations.<sup>9</sup> In fact, Morgan Murphy and other broadcasters in smaller-to-medium-sized markets have been able to realize operational advantages for their stations critical to their viability. It would be unwise to require broadcasters to re-establish multiple new studio locations where multiple stations have been consolidated to better serve the public. The stated purpose of the main-studio rules was to facilitate community contact to the station "to voice suggestions or complaints," yet there is no rational connection between this stated goal and constricting the main studio rule.

***No additional regulations are needed regarding affiliate review of network programming.***

The Commission seeks comment on the "limited issue of affiliate review of network programming"; specifically, regarding whether new regulations are required to permit licensees to be able to review network programming sufficiently in advance of airtime to determine whether the programming is unsatisfactory, unsuitable or contrary to the public interest.<sup>10</sup> Morgan Murphy believes that new rules would intrude on private contractual matters and that affiliates currently have sufficient opportunities and incentives to properly protect these interests. Moreover, Morgan Murphy believes that advance review of network programming on the scale suggested in the NPRM simply is too burdensome for practical implementation.

---

<sup>9</sup> See, e.g., *Review of the Commission's Rules Regarding the Main Studio and Local Public Inspection Files of Broadcast Television and Radio Stations*, Report and Order, 13 FCC Rcd 15691, ¶¶ 9-10 (1998).

<sup>10</sup> NPRM at 45.



*Quantification of programming guidelines for renewal purposes raises  
First Amendment concerns*

The NPRM requests comment regarding whether the Commission should adopt specific guidelines for processing station renewal applications based on “localism performance.”<sup>11</sup>

Morgan Murphy cautions against efforts by the Commission to quantify minimally acceptable local programs because such efforts risk running afoul of broadcasters’ First Amendment rights.

Morgan Murphy concurs with the statement of Commissioner McDowell:

Vigorous competition motivates broadcasters to serve their local communities. I do not believe that government needs to, or should, foist upon local stations its preferences regarding categories of programming. We risk treading on the First Amendment rights of broadcasters with unnecessary regulation. An order reflecting these conclusions will be overturned in court.<sup>12</sup>

Here, the risk is real and the regulation unnecessary. Efforts to categorize programming in this way most likely are unconstitutionally overbroad and/or vague. The difficulties should be apparent in identifying the permissible localism categories and linking them to specific regulatory consequences (i.e., license renewal). Even in the promotion of otherwise laudable objectives, content regulation such as this would impermissibly impinge on broadcasters’ First Amendment rights to select editorial content. The NPRM’s approach sets a course for the introduction of programming quotas that are not content neutral. Morgan Murphy strongly requests that the Commission decline to adopt such the proposed “processing guidelines.”

---

<sup>11</sup> NPRM at 56.

<sup>12</sup> See Statement of Commissioner Robert M. McDowell, concurring in part, in *Broadcast Localism, Report on Broadcast Localism and Notice of Proposed Rulemaking* (rel. Jan. 24, 2008).

### ***Conclusion***

Morgan Murphy applauds the Commission's examination of broadcasters and localism, but is concerned that certain proposals – described herein – present “solutions” in search of a problem. The NPRM grossly understates the burden associated with certain of its proposals and fails to articulate sufficient benefits to justify the burdens. The Commission's attempts to promote localism would merely increase costs and regulation and likely would have the unintended effect of limiting community involvement and costly local programming. Morgan Murphy urges the Commission to take a measured, incremental approach to promoting localism.

Respectfully submitted,

**Morgan Murphy Media**

By: /s/ Robert J. Rini

Robert J. Rini  
Jonathan E. Allen  
Rini Coran, PC  
1615 L Street, NW Suite 1325  
Washington, DC 20036  
202-296-2007  
*Counsel to Morgan Murphy Media*

April 28, 2008